

# Submission on the Review of community legal centre (CLC) services

**30 October 2017**

Cameron Review  
Justice Strategy and Policy Division  
Department of Justice  
GPO Box 31  
Sydney NSW 2001  
By email: [cameronreview@justice.nsw.gov.au](mailto:cameronreview@justice.nsw.gov.au)

**Contact:**

**Emily Ryan**

President, NSW Young Lawyers

**Ross Mackay**

Chair, NSW Young Lawyers Environment and Planning Law Committee

**Melissa Mastronardi**

Chair, NSW Young Lawyers BushWeb Regional Issues Committee

**Contributors:**

Jane Dillon, James Fan, Emma Johnston, Alistair Knox and Sam Murray.

NSW Young Lawyers makes the following submission in response to the Review of community legal centre (CLC) services.

## **NSW Young Lawyers**

NSW Young Lawyers is a division of the Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

## **The Committees**

The NSW Young Lawyers Bushweb Regional Issues Committee is made up of NSW Young Lawyers Representatives appointed or elected by the 29 Regional Law Societies throughout NSW. It is responsible for providing and facilitating peer support for NSW Young Lawyers Members throughout NSW, particularly those in regional and rural areas.

The NSW Young Lawyers Environment and Planning Law Committee delves into all aspects of environment and planning law, raising awareness across the legal profession and the wider community about new and upcoming changes to both NSW and national legislation, as well developments in case law and policy.

## **Introduction**

The Committees recommend increased funding for community legal centres (**CLCs**) to ensure greater access to justice for all people in NSW. While CLCs play a vital role in ensuring access to justice, including for the most disadvantaged people in our community, they also play a vital role in serving the public interest. In addition to this, CLCs provide a training ground for law students and young lawyers, offering opportunities for employment and volunteering. CLCs help law students and young lawyers develop practical legal skills while instilling a sense of social justice in those entering the legal profession.

### **Ensuring access to justice**

CLCs play a vital role in ensuring access to justice for the people of NSW. CLCs, whether generalist or specialist, regional or metropolitan, play a diverse role in the justice sector, helping clients with advice and community education, using their expertise to assist governments with law reform, and maintaining strong connections across their communities. Funding for CLCs is vital to ensuring the people of NSW are able to access the justice system.

While there may be some duplication in the work undertaken by CLCs and Legal Aid NSW, the services offered are different. Many of the clients using CLCs are not entitled to Legal Aid and cannot afford private solicitors. In addition to this, Legal Aid is not available for public interest matters.

### **Assisting potential self-represented litigants and lessening the burden on the Courts**

There is a solid practical rationale for increased subsidised or free access to competent legal services through the proper funding of CLCs, and that is to reduce the administrative economic costs imposed on the court system by self-represented litigants.

The unfortunate reality is that self-represented litigants add significant financial and time costs to an already overburdened court system with limited resources. These costs accumulate in several ways:

1. Unmeritorious Claims
2. Unmeritorious Motions
3. Unmeritorious Submissions
4. Poor Conduct of Proceedings<sup>1</sup>

The Committees are of the view that these issues all impose significant costs not only on other parties in proceedings but also on the court's resources.

Everything that occurs in such proceedings, from directions hearings, to interlocutory hearings, to any ultimate hearing, to any appeal, and their attendant costs, is potentially a preventable cost.<sup>2</sup> Unmeritorious

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<sup>1</sup> These problems can of course stack and reinforce each other, in that a self-represented litigant can seek to make Unmeritorious Motions in Unmeritorious Claims, further driving up court costs.

<sup>2</sup> See for example, the advice provided by McCallum J to a self-represented litigant in *Application of Adrian Ashley of the House of Cooper* [2017] NSWSC 533 at [27]:

*I wish to record that, during the hearing, I informed the petitioner on a number of occasions that it remains open to the applicant to make a release application under the Bail Act 2013 (NSW). The petitioner appeared to reject that proposition, evidently taking the view that a release application is only appropriate in circumstances of lawful detention, whereas he contends the applicant's detention is unlawful. The petitioner's view is misconceived in that respect and he potentially does the applicant a disservice in adhering to it. It is to be hoped that the applicant is aware of his entitlement (notwithstanding his stated position of eschewing the benefits and*

Motions can burden the entirety of the court's time with specific kinds of motions. For instance, apprehension of bias claims and other motions that do not otherwise end the proceedings.<sup>3</sup> Unmeritorious Submissions can burden the court's time in the airing of them and the subsequent time of the judge in writing judgments about them.<sup>4</sup> Finally, Poor Conduct of Proceedings, from everything including failure to prepare the right court books, adduce the right kinds of evidence, or inability to clearly articulate submissions, can add delays and costs of otherwise meritorious proceedings.<sup>5</sup> The importance of avoiding costs and delays in court proceedings should not be dismissed as being of minimal importance: arguably, the most important section of the *Civil Procedure Act 2005* (NSW) is section 56:

*"[t]he overriding purpose of this Act and of rules of court, in their application to civil proceedings, is to facilitate the **just, quick and cheap** resolution of the real issues in the proceedings."* (Emphasis added).

The management of litigation is complex and confusing to those without legal training or an understanding of legal jargon. The above analysis merely recognises the difficulty in navigating those complex systems without legal assistance, and the regrettable reality that such difficulty affects the broader administration of justice in the State.

While there will always be litigants who seek to represent themselves after refusing competent legal advice that provides inconvenient answers,<sup>6</sup> it is clear that many self-represented litigants, if provided with even a

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*privileges conferred upon him by the State) to bring a release application under the Bail Act. Any such application is likely to be better received without the embellishment of insistence upon medieval modes of address or ill-informed incantation of God's law and Magna Carta.*

<sup>3</sup> See for example, the criticism by Sackville AJA of the conduct of the Bobolas Litigation at [257] of *Bobolas v Waverley Council* [2016] NSWCA 139:

*"Each cycle had been characterised by multiple court proceedings and disputes over issues such as the form of orders and whether documents have been properly served, rather than whether the accumulated rubbish presents a danger to health."*

<sup>4</sup> See *Maksacheff v Commonwealth Bank of Australia* [2017] NSWCA 126 at [97].

<sup>5</sup> See for example the account given in *Palermo Seafoods Pty Ltd v Lunapas Pty Ltd* [2016] NSWCA 82 by Simpson JA and Sackville AJA at [22]:

*"The appellant, as indicated above, was not legally represented on the appeal (although, in various interlocutory proceedings, it had had legal representation). The preparation of the appeal books was wholly deficient. No "Black Book" containing the transcript of the oral evidence was filed in accordance with the Uniform Civil Procedure Rules 2005 (NSW) ("UCPR") r 51.28. None of the affidavits was provided. Folders of material were provided, but it was impossible to discern any pattern in their contents. The Court, accordingly, made its own inquiries, and obtained transcripts, some affidavits, and the submissions that had been made at first instance. Not all relevant documentation could be located.*

<sup>6</sup> And similarly, there are always incompetent or unethical lawyers who encourage or actively participate in unmeritorious claims, motions and submissions. Notwithstanding that inevitability, due to the series of robust regulatory and self-regulatory mechanisms available to discipline such lawyers, those costs can be managed better than the costs inherent with self-represented litigants.

modicum of competent legal advice, adjust their litigious conduct in such a way that would significantly streamline legal proceedings.

The Committees submit that the expansive provision of free and competent legal advice and representation through the proper funding of CLCs would help mitigate the adoption of self-represented litigious strategies with the attendant legal costs, and in doing so, there is a clear public benefit to the administration of justice.

### **Servicing and protecting the public interest**

The State's two CLCs servicing and protecting the public interest, the Public Interest Advocacy Centre (**PIAC**) and the Environmental Defenders Office NSW (**EDO NSW**), advance access for justice not only for people who cannot afford specialist legal services, but also those who wish to ensure that public interest considerations are fulfilled in decision-making processes.

The public interest work of PIAC crosses many areas, including homelessness, the rights of people seeking asylum, policing and detention, discrimination, and Aboriginal justice. These public interest matters deserve the attention of a properly funded professional legal organisation to work with communities, regardless of whether those groups and individuals have the means to pay full price for legal services. Failure to adequately fund PIAC has the potential to severely curtail the protection of the public interest.

Public participation in environment and planning law is currently a statutory requirement in NSW under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). Relevantly, an object of the EP&A Act is "the provision and coordination of community services and facilities".<sup>7</sup> Section 39(4) of the *Land and Environment Court Act 1979* imposes on the court a general requirement to take into account the public interest in dealing with an objector appeal, effectively mandating a role for the public to play in environmental regulation and oversight of the principles of ecologically sustainable development (**ESD**). Having open access to legal services, not limited only to those groups with the ability to pay full cost, is critical to empowering the public to be able to fulfil this role. The role of EDO NSW in upholding the rule of law has been noted by no less an authority than the former Chief Justice of the High Court of Australia, the Hon Robert French AC.<sup>8</sup>

As the sole CLC providing this specialist legal knowledge to communities and individuals in NSW, the social and economic benefits of EDO NSW has State-wide, and often times, national significance. The long-term conservation and protection of Australia's natural assets and culture needs a professional legal organisation to work with community groups and individuals seeking to minimise the potential for long-standing harm,

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<sup>7</sup> *Environmental Planning and Assessment Act 1979* (NSW), s5(v).

<sup>8</sup> French, R, 'Lawyers, Causes and Passion', [2015] (Summer) *Bar News* 44.

regardless of whether those groups and individuals have the means to pay full price for legal services. Failure to adequately fund EDO NSW will severely curtail access to justice for environmental and community groups, and subsequently the administration of environmental and planning law, and the application of the principles of ESD, across NSW.

## Concluding Comments

NSW Young Lawyers and the Committees thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned.

### Contact:



**Emily Ryan**

President

NSW Young Lawyers

Email: [president@younglawyers.com.au](mailto:president@younglawyers.com.au)

### Alternate Contacts:

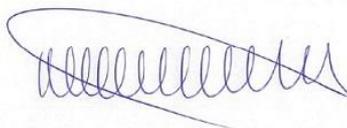


**Ross Mackay**

Chair

NSW Young Lawyers Environment and Planning Law Committee

Email: [envirolaw.chair@younglawyers.com.au](mailto:envirolaw.chair@younglawyers.com.au)



**Melissa Mastronardi**

Chair

NSW Young Lawyers BushWeb Regional Issues Committee

Email: [bushweb.chair@younglawyers.com.au](mailto:bushweb.chair@younglawyers.com.au)